

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

NR DOE, MR DOE,
AR DOE,

Plaintiffs,

v.

Case No. 09-C-0545

ST FRANCIS SCHOOL DISTRICT,
and KELLY SWEET,

Defendants.

v.

COMMUNITY INSURANCE CORPORATION,

Intervenor Defendant.

DECISION AND ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL FOR
DEFENDANT KELLY SWEET (DOC. 110), GRANTING PLAINTIFFS' MOTION TO
STRIKE ST. FRANCIS SCHOOL DISTRICT'S RESPONSE TO DISTRICT'S
PROPOSED FINDINGS OF FACT (DOC. 109), AND DENYING INTERVENOR-
DEFENDANT, COMMUNITY INSURANCE CORPORATION'S REQUEST TO
WITHDRAW MOTION FOR RULE 11 SANCTIONS (DOC. 94)

In addition to motions for summary judgment filed by St. Francis School District and Community Insurance Corporation (CIC), CIC has filed a motion for Rule 11 sanctions against Kelly Sweet for her filing and/or maintaining a frivolous cross-claim against CIC. Plaintiffs have moved to strike St. Francis School District's reply to plaintiffs' response to the District's proposed findings of fact, and Gimbel, Reilly, Guerin & Brown, LLP, have requested to withdraw as counsel for Kelly Sweet. The court, having thoroughly reviewed the submissions of the parties, will grant the motions to strike and to withdraw as counsel. Additionally, the court will deny the request for sanctions. A separate order shall issue regarding the pending summary judgment motions.

First, Christopher L. Strobehn and Gimbel, Reilly, Guerin & Brown request to be removed as counsel for Sweet for reasons set forth in the affidavit of Christopher L. Strobehn. Sweet has not responded to her counsel's motion to withdraw, which was filed on June 27, 2011. The situation counsel describes in requesting permission to withdraw appears to fall within the ambit of Wisconsin SCR 20:1.16(b)(6). Under these circumstances, counsel has demonstrated "good cause" for his withdrawal.

Second, Attorney Michelle Ford, on behalf of CIC, filed a motion for sanctions based on Sweet's cross-claim against CIC when its policy of insurance excludes injury "arising out of the willful violation of a penal statute." Ford withdrew another Rule 11 motion against the plaintiffs stating that there had been "confusion among counsel" In any event, Rule 11(c) provides for sanctions where Rule 11(b) has been violated. Rule 11(b)(2) provides that, by signing a document, the signatory certifies to the court and all parties that all legal contentions contained in the signed document "are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Further Rule 11(b)(3) provides that factual contentions must have evidentiary support. The Federal Advisory Committee Notes provide:

That summary judgment is rendered against a party does not necessarily mean, for purposes of this certification, that it had no evidentiary support for its position. On the other hand, if a party has evidence with respect to a contention that would suffice to defeat a motion for summary judgment based thereon, it would have sufficient "evidentiary support" for purposes of Rule 11.

Fed. R. Civ. P. 11 advisory committee's note (1993 amendments). Hence, even if there are no genuine issues of material fact, Rule 11 may not apply.

CIC has moved for sanctions against Sweet after her attorney filed her cross-claim against CIC. Rule 11 provides that *signatories* to documents are those who expose themselves to Rule 11 sanctions. After reviewing the arguments presented by Sweet in opposition to CIC's motion for sanctions, particularly with respect to the issuance of insurance coverage, the court is not persuaded that Sweet's cross-claim is frivolous and as such warrants the imposition of sanctions and attorney's fees

Finally, plaintiffs moved to strike St. Francis School District's reply to plaintiffs' response to the District's proposed findings of fact. Civil L.R. 56(b) contemplates a response to proposed findings of fact but not a reply, and St. Francis School District never sought leave to file the supplemental pleading. Now, therefore,

IT IS ORDERED that Community Insurance Corporation's motion for Rule 11 sanctions is denied. (Doc. 94)

IT IS FURTHER ORDERED that plaintiffs' motion to strike St. Francis School District's reply to plaintiffs' response to District's proposed findings of fact is granted. (Doc. 109)

IT IS FURTHER ORDERED that the motion to withdraw as counsel for Kelly Sweet is granted. (Doc. 110)

Dated at Milwaukee, Wisconsin, this 27th day of September, 2011.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
CHIEF U. S. DISTRICT JUDGE